

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposal To Determine *Paronychia argyrocoma* var. *albimontana* (Silverling), To Be a Threatened Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to determine a plant, *Paronychia argyrocoma* var. *albimontana* (silverling), to be a threatened species under the authority contained in the endangered Species Act of 1973. The silverling occurs in Maine, New Hampshire and Massachusetts on State, private, and U.S. Forest Service lands. The plant is threatened due to taking, vandalism, and trampling by hikers, and due to its highly restricted range and small population sizes. A determination of *Paronychia argyrocoma* var. *albimontana* to be a Threatened species would implement the protection provided by the Endangered Species Act of 1973 as amended.

**DATES:** Comments from the public must be received on or before December 28, 1980. Comments from the Governors of Maine, New Hampshire, and Massachusetts must be received on or before January 28, 1981.

**ADDRESSES:** Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. (703)235-1975.

**SUPPLEMENTARY INFORMATION:** *Paronychia argyrocoma* var. *albimontana* was first collected by Edward Tuckerman in the 1800's from a slide on Mt. Clinton in the White Mountains, Coos County, NH. In 1906, the botanist Merritt L. Fernald recognized the plant, by then collected from several sites in Maine, New Hampshire, and Massachusetts, as distinct from *Paronychia argyrocoma*.

var. *argyrocoma* growing on mountains in the southeast. Fernald named this distinct variety "var. *albimontana*" ("of the White Mountains").

This small perennial herb of the carnation family forms branched tufts several inches in height. Small flowers are densely aggregated at the tops of the stems, and are surrounded by conspicuous silvery bracts, which give the plant its silvery appearance.

*Paronychia argyrocoma* var. *albimontana* occurs on the tops of mid-elevation mountains and ledges (generally below 4000'), and in several cases along rocky stream shores or on riverside ledges. Those plants which occupy ledge habitats generally grow in rock crevices in thin, gravelly soil. Occasionally species such as the three-toothed cinquefoil (*Potentilla tridentata*) and purple crowberry (*Empetrum atropurpureum*) are found in association with the silverling. The plants and habitat are exposed to harsh weather conditions and often to heavy hiker traffic, as several populations occur at the tops of frequently-visited mountains or alongside trails.

This rule proposes to determine *Paronychia argyrocoma* var. *albimontana* to be Threatened, which would implement the protection provided by the Endangered Species Act of 1973. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

#### Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* [40 FR 27823-27924] of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. *Paronychia argyrocoma* var. *albimontana* was included in the July 1, 1975 notice of review. At this time the Service has sufficient information to warrant proposing *Paronychia argyrocoma* var. *albimontana*. Comments which are received during the comment period for this proposal will be summarized in the final rule.

#### Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.)

states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Paronychia argyrocoma* (Michx.) Nutt. var. *albimontana* Fernald (silverling) are as follows:

#### *Paronychia argyrocoma* var. *albimontana*

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* The taxon has been documented from a total of approximately 27 locations in New England since its first collection in the early 1800's. Thirteen of these sites have been verified in recent years. Nine of the existing sites occur in Carroll and Coos counties, New Hampshire; three occur in Oxford County, Maine; and one occurs in Essex County, Massachusetts. Five sites formerly occupied by the species in New Hampshire were examined and no plants were found. Poor locality information from herbarium specimens has precluded surveys of other reported sites.

The majority of the sites in New Hampshire occur in the White Mountain National Forest and are heavily used by hikers. Damage to plants occurring near trails is evident in several locations. In addition, all of the New Hampshire populations are quite small, ranging in size from 1-60 colonies per population, and occupy small areas. These sites could be seriously damaged or eliminated by trampling or natural factors. An additional threat to a population in Carter Notch, Coos County, New Hampshire consisted of a proposal for the construction of a helicopter pad in the area occupied by the plants. It was decided that approval for construction would not be requested, partly in consideration of the existence of *Paronychia* on the site. This does, however, illustrate the nature of threats to these populations in mountainous areas, as well as the necessity of protecting the areas from future threats.

Other recently documented sites in New Hampshire occur on State and privately owned lands. Several of these populations also occur on mountain tops or ledge areas which receive fairly heavy recreational use. One population, in an area used by rock climbers, consisted of a single individual in 1977. Another site receiving frequent use by hikers contained plants evidently killed by trampling, although healthy colonies were present in a relatively inaccessible area nearby.

The single Massachusetts population has fluctuated in size since an early

description of the site in 1945. At that time, 196 colonies of the plant were reported on a small ledge on an island in the Merrimack River, Essex County. In 1978, 56 colonies were reported at the site. A census taken in 1980 revealed 104 mature colonies, 93 seedlings, and 10 dead or nearly dead colonies. The cause of this fluctuation is unknown, although it may be due to human disturbance, or to natural population fluctuations. The area is maintained as a State Wildlife Sanctuary, and regulations prohibit the picking of plants, in addition to prohibiting use by overnight campers. These regulations are difficult to enforce, however.

Little is known about the status of *Paronychia* in Maine. A total of seven sites have been reported by herbarium specimens. Only three of these have been rediscovered in recent years. The remainder of the sites have not been examined recently due to scanty location information on herbarium specimen labels. Of the three known sites in Maine, two occur on U.S. Forest Service land (White Mountain National Forest), and the third site is state-owned.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Collecting for scientific specimens has removed a significant number of plants from the wild. Collecting poses a serious threat to the smallest populations, several of which consist of only one plant. No commercial activities are known to involve this plant.

(3) *Disease or predation* [including grazing]. Not applicable to this species.

(4) *Inadequacy of existing regulatory mechanisms.* Although *Paronychia argyrocoma* var. *albimontana* appears on State lists which were developed by botanists in Maine, New Hampshire, and Massachusetts, no State legislation currently offers it specific protection in any of these three States. The Forest Service's regulations governing the land on which several of the New Hampshire and Maine populations occur prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9).

In Maine, several land use planning laws provide protection to rare plants indirectly through zoning regulations. Title 12 of the Maine Revised Statutes, Chapter 10, designates zoning rules and regulations administered by the Land Use Regulatory Commission. These regulations provide for zoning in specific "resource protection districts" within unorganized territories in Maine. Resource protection districts include shorelands, wetlands, floodplains, high

elevation areas (above 2700'), historically, archeological areas and the like. Zoning regulations and a permit system would be implemented if an activity would adversely impact these areas (Title 12 Section 4811-14). Since *Paronychia* occurs in some of these areas protected by zoning laws, as well as on U.S. Forest Service lands, portions of the habitat of the plant are offered some protection under Maine law.

The Maine Critical Areas Program (Title 5, Chapter 312, Section 3310-3314), though non-regulatory, provides protection to unique areas through consultation with private landowners.

Two Massachusetts State laws protect certain plant species, but no legal protection is presently offered to Federally Endangered or Threatened species. Protected plant species are *Epigaea repens* (Mayflower) [Massachusetts General Laws Chapter 2 Section 7]; and all wild azaleas, orchids, and the cardinal flower [Massachusetts General Laws Chapter 266 Section 116a].

The Endangered Species Act will provide additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence.* Taking poses a significant threat to the species. Collection of *Paronychia* by wildflower enthusiasts for rock gardens is also known to have occurred. Since these plants occur in open, exposed areas near hiking trails, there is a very real threat of increased taking or vandalism should these areas be publicized through Critical Habitat proposal.

The species is threatened due to its small number of populations and small population sizes in addition to taking and vandalism threats. This combination of restricted range and small population sizes makes the taxon vulnerable to changes in climate, to predation or disease, or to changes in human behavior (such as increased recreational pressure). Each of these populations is of major importance to the survival of the taxon, and loss of any population would constitute a serious threat to the survival of the taxon.

#### Critical Habitat

Critical Habitat is not being proposed at this time. It is felt that designation of Critical Habitat would not be in the best interest of the species, but would, in fact cause the species to be in greater jeopardy. This is due to the occurrence of the plant in recreational areas receiving great amounts of use. Human trampling and taking are primary threats to the taxon. The habitat in which the species occurs in fragile and easily disturbed by hikers. Designation of Critical Habitat would only serve to

attract public attention to these fragile areas and to the small but attractive plants. At present, trampling in most of these areas is inadvertent. The increase in attention that certain sites would derive from Critical Habitat designation would cause an increase in trampling from curiosity seekers and would expose the plants to increased taking and vandalism pressures.

#### Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977 Federal Register set forth in series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise.

The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Paronychia argyrocoma* var. *albimontana* all prohibitions of Section 9(a)(2) of the Act, as implemented by Sections 17.61 and 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7(a) of the Act provides that each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4.

Section 7(a) of the Act also requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection would accrue to *Paronychia argyrocoma* var. *albimontana* if it is later determined to

be Threatened as a result of this proposal.

Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Paronychia argyrocoma* var. *albimontana*.

This rule would have no effect on private landowners in areas where *Paronychia argyrocoma* var. *albimontana* occurs, other than those mentioned in the above paragraphs. The U.S. Forest Service, however, would be required to insure that their activities are not likely to jeopardize the continued existence of the species. This may require the Forest Service to conduct a monitoring program to determine how best to protect this species. Steps such as trail relocation, building of small barriers to keep hikers on trails, and posting of signs to alert hikers of the fragility of the vegetation may be necessary to give the populations adequate protection.

#### National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

#### Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of an Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;
- (2) Additional information concerning the range and distribution of this species; and
- (3) Current or planned activities in the subject area.

Final promulgation of the regulations on *Paronychia argyrocoma* var. *albimontana* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final regulation that differs from this proposal.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884). The primary author of this proposed rule is Ms. Irene M. Storks, Washington Office of Endangered Species (703/235-1975).

**Note.**—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

#### Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

#### § 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family:						
<i>Paronychia argyrocoma</i> var. <i>albi-</i>	Silverling, Silver	USA: ME, NH, MA....	T	.....	NA	NA
<i>montana</i> .	whitlow-wort.					

Dated: October 17, 1980.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

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